

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42380
Docket No. MW-42740
16-3-NRAB-00003-140432**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(BNSF Railway Company (former Burlington
(Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [Level S combined suspension twenty-nine (29) days actual suspension and one (1) day record suspension and three (3) year review period] imposed upon Mr. V. Reimer, Jr. by letter dated April 24, 2013 for alleged violation of MOWOR 1.15 Duty-Reporting or Absence in connection with charges of alleged ‘. . . failure when you left your assignment without authority and were observed at your home from 08:30 until approximately 12:30, March 22, 2013. ***’ was without just cause, on the basis of unproven charges, excessive and in violation of the Agreement (System File T-D-4234-M/11-13-0024 BNR).**
- (2) The Agreement was further violated when the claim* filed by Vice General Chairman J. Mozinski, Jr. under date of June 20, 2013 to General Manager Twin Cities Division R. Ebel was not denied by Mr. Ebel, pursuant to Rule 42 and shall now be allowed in accordance with said rule.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant V. Riemer, Jr. shall ‘. . . be immediately paid for his lost time and days withheld from service, including any and all overtime paid to the position he was signed to work, any expenses lost and we also request that Mr. Reimer (sic) be made**

whole for any and all benefits, and his record cleared of any reference to any of the discipline set forth in the letter received by the Organization on April 25, 2013 letter from Jason Randash.'

*The initial letter of claim will be reproduced within our submission."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

It is undisputed that the Claimant told his supervisor that he was going to go with his Section and made no mention of any other intent. Apparently, when he got off the phone, his Section had already left. The Claimant asserts he had forgotten to take medication, so he returned home for it without authorization. He was followed, though no one saw him enter or leave his house. The Claimant asserts he subsequently left his Suburban at the house and took his Toyota to inspect track and clean the depot. Carrier witnesses saw his Suburban at his house for several hours. Following investigation, he was found to have violated MOWOR 1.15 Duty – Reporting or Absence and was assessed a Level S Combined Suspension consisting of 29 days actual suspension plus one day record suspension, with a three year review period.

The Carrier argues the Claimant has already received leniency because at the time of this incident, he was under a review period for a previous rule violation. It notes the Claimant was found not guilty of theft, but was only accused of leaving his assignment without proper authority.

The Carrier contends his explanations are convenient and do not make sense. The Carrier does not credit the Claimant's explanation that he took his personal vehicle because he could not seek reimbursement for mileage between his home and headquarter location.

The Claimant went home without notifying his supervisor yet he entered eight hours work time into the payroll records. He is guilty of failure to report for duty and leaving his assignment. These infractions are cause for dismissal, yet he only received a Level S combined, 29 days actual suspension, and one day record.

The Organization argues that at no point did anyone see the Claimant at his house. He admitted going home to get his medication and then again to get his lunch. He said he inspected switches and crossings during the day. He submitted a detailed report of the work he did that day.

Prior to this incident, the Claimant had impeccable attendance. The discipline taken was excessive and unwarranted. He is a 35 year employee with a good work record. The Carrier should have called the Claimant to see what he was doing rather than lurk around his house.

The rule in question states:

"Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. Employees must not leave their assignment, exchange duties, or allow others to fill their assignment without proper authority. Continued failure by employees to protect their employment will be cause for dismissal."

The Board has reviewed the record and finds the Carrier has no obligation to call employees to see where they are. The Claimant told the Carrier he was going with his Section and the Carrier could fully expect him to do so. It was up to the Claimant to let supervision know of any change in plans. By his own admission, the Claimant went home without authorization or knowledge of supervision. When he failed to accompany his gang, he made no attempt to contact supervision for instructions, but took it upon himself to go home instead. These facts establish that the Carrier had substantial evidence to support the discipline taken in the case.

The Claimant was already under a review period. In this context, his discipline was lenient in that he was not terminated but required to serve a suspension instead. The Board is not persuaded that under these circumstances, the Carrier elected a penalty that was unduly harsh.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 30th day of August 2016.